

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005

A Bill

SENATE BILL 509

4
5 By: Senator Hill
6 By: Representative Jackson

For An Act To Be Entitled

10 AN ACT TO AMEND ARKANSAS LAW TO PROVIDE FOR THE
11 WITHHOLDING OF INCOME TAX BY PASS-THROUGH
12 ENTITIES ON NONRESIDENT TAXPAYERS; AND FOR OTHER
13 PURPOSES.

Subtitle

16 PROVIDES FOR THE WITHHOLDING OF INCOME
17 TAX BY PASS-THROUGH ENTITIES ON
18 NONRESIDENT TAXPAYERS.

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

23 SECTION 1. Arkansas Code Title 26, Chapter 51, Subchapter 9 is amended
24 to add a new section to read as follows:

25 26-51-918. Pass-through entities.

26 (a) As used in this section:

27 (1) "Lower-tier pass-through entity" means a pass-through entity
28 that is itself a pass-through entity;

29 (2)(A) "Member" means a shareholder of a Subchapter S
30 corporation, a partner in a general partnership, a partner in a limited
31 partnership, a partner in a limited liability partnership, a member of a
32 limited liability company, or a beneficiary of a trust.

33 (B) "Member" shall not mean a Subchapter C corporation as
34 defined in Section 1361(a) of the Internal Revenue Code of 1986, in effect
35 January 1, 2005;

36 (3) "Nonresident" means:



1 (A) An individual who is not a resident of or domiciled in
2 Arkansas;

3 (B) A business entity that does not have its commercial
4 domicile in Arkansas; or

5 (C) A trust not organized in Arkansas; and

6 (4) "Pass-through entity" means a business entity that for the
7 applicable tax year is:

8 (A) A corporation treated as a Subchapter S corporation
9 under § 26-51-409, a general partnership, limited partnership, limited
10 liability partnership, limited liability company, or a trust; and

11 (B) Not taxed as a corporation for federal or Arkansas
12 income tax purposes.

13 (b)(1)(A) A pass-through entity shall withhold Arkansas income tax at
14 the highest income tax rate levied under §§ 26-51-201 and 26-51-202 on the
15 share of income of the entity distributed to each nonresident member. The
16 pass-through entity is liable to the Director of the Department of Finance
17 and Administration for the payment of the tax withheld and is not liable to
18 the member for the amount withheld and paid to the director.

19 (B)(i) A member of a lower-tier pass-through entity shall
20 withhold and pay income tax on the share of income distributed by the lower-
21 tier pass-through entity to each of its nonresident members.

22 (ii) The director shall apply the tax withheld and
23 paid by a pass-through entity on distributions to a lower-tier pass-through
24 entity to the withholding required of that lower-tier pass-through entity.

25 (2) A pass-through entity shall pay the amount withheld
26 quarterly as follows:

27 (A) The first installment is due on or before the
28 fifteenth day of the fourth month of the pass-through entity's tax year;

29 (B) The second installment is due on or before the
30 fifteenth day of the seventh month of the pass-through entity's tax year;

31 (C) The third installment is due on or before the fifteenth
32 day of the tenth month of the pass-through entity's tax year; and

33 (D) The fourth installment is due on or before the
34 fifteenth day of the first month following the close of the pass-through
35 entity's tax year.

36 (3)(A) On or before February 28 following the close of the pass-

1 through entity's tax year, a pass-through entity shall file an annual return
2 with the director showing the total amount of tax paid or credited to its
3 nonresident members and the amount of tax withheld.

4 (B) The annual return shall be in an electronic format
5 prescribed by the director.

6 (4) A pass-through entity shall annually furnish its nonresident
7 members with a record of the amount of tax withheld on behalf of the
8 nonresident member no later than the fifteenth day of the third month
9 following the end of the pass-through entity's tax year.

10 (c) A pass-through entity is not required to withhold tax for a
11 nonresident member if:

12 (1) The member has a pro rata or distributive share of income of
13 the pass-through entity from doing business in or deriving income from
14 sources within this state of less than one thousand dollars (\$1,000) per
15 year;

16 (2) The director has determined that the nonresident member's
17 income is not subject to withholding;

18 (3) The nonresident member elects to have the tax due paid as
19 part of a composite return filed by the pass-through entity under subsection
20 (d) of this section; or

21 (4) The entity:

22 (A) Is a publicly traded partnership as defined by Section
23 7704(b) of the Internal Revenue Code, as in effect on January 1, 2005, that
24 is treated as a partnership for the purposes of federal income taxation; and

25 (B) Has agreed to file an annual information return
26 reporting the name, address, and taxpayer identification number of each
27 partner with an annual Arkansas income greater than five hundred dollars
28 (\$500) along with any other information requested by the director.

29 (d)(1) A pass-through entity may file a composite income tax return on
30 behalf of electing nonresident members reporting and paying Arkansas income
31 tax at the highest income tax rate under §§ 26-51-201 and 26-51-202 on the
32 nonresident members' pro rata or distributive shares of income of the pass-
33 through entity from doing business in or deriving income from sources within
34 this state.

35 (2) A nonresident member whose only source of income within this
36 state is from one (1) or more pass-through entities may elect to be included

1 in a composite return filed pursuant to this section.

2 (3) A nonresident member who has been included in a composite
3 return may file an individual income tax return and shall receive credit for
4 income tax paid on the nonresident member's behalf by the pass-through
5 entity.

6 (4) The tax due on the composite income tax return shall be due
7 and payable quarterly in accordance with subdivision (b)(2) of this section.

8 (5)(A) On or before February 28 following the close of the pass-
9 through entity's tax year, a pass-through entity shall file an annual
10 composite return with the director showing the total amount of tax paid or
11 credited to its nonresident members and the amount of tax withheld.

12 (B) The annual return shall be in an electronic format
13 prescribed by the director.

14 (e) The director may promulgate rules necessary to administer this
15 section.

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17 SECTION 2. This act shall become effective for tax years beginning on
18 or after January 1, 2006.

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